

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

LEHMAN BROTHERS SECURITIES AND ERISA
LITIGATION

This Document Applies To:

American National Insurance Company, et al. v. Fuld, et al.
Case No. 1:09-cv-02363-LAK;

California Public Employees' Retirement System v. Fuld, et al.
Case No. 1:11-cv-01281-LAK;

City of Auburn v. Fuld, et al.
Case No. 1:09-cv-03474-LAK;

City of Burbank v. Fuld, et al.
Case No. 1:09-cv-03475-LAK;

City of Cerritos v. Citigroup Global Market, Inc., et al.
Case No. 1:09-cv-07878-LAK

City of Fremont v. Citigroup Global Markets, Inc., et al.
Case No. 1:09-cv-03478-LAK;

City of Long Beach v. Fuld, et al.
Case No. 1:09-cv-03467-LAK;

City of San Buenaventura v. Fuld, et al.
Case No. 1:09-cv-03476-LAK;

*City of South San Francisco v. Citigroup Global Markets,
Inc., et al.*
Case No. 1:09-cv-01946-LAK;

Contra Costa Water District v. Fuld, et al.
Case No. 1:09-cv-06652-LAK;

County of Alameda v. Ernst & Young, LLP, et al.
Case No. 1:09-cv-07877-LAK;

Civil Action No. 09 MD 2017 (LAK)

ECF CASE

NOTICE OF MOTION

County of Tuolumne v. Ernst & Young, LLP, et al.
Case No. 1:09-cv-03468-LAK;

Danis v. Ernst & Young LLP, et al.
Case No. 1:11-cv-09001-LAK;

Epstein Real Estate Advisory Retirement Trust v. Fuld, et al.
Case No. 1:10-cv-05617-LAK;

Fifty-Ninth Street Investors LLC v. Ernst & Young, LLP, et al.
Case No. 1:11-cv-4278-LAK;

Loschiavo et al. v. Fidelity Management Trust Co.
Case No. 1:10-cv-08631-LAK;

Mary A. Zeeb, Monterey County Treasurer, on Behalf of the Monterey County Investment Pool v. Fuld, et al.
Case No. 1:09-cv-01944-LAK;

Remer v. Fuld, et al.,
Case No. 1:10-cv-02926-LAK;

San Mateo County Investment Pool v. Fuld, et al.
Case No. 1:09-cv-01239-LAK;

Avi Schron and Adina Schron, JTWROS v. Ernst & Young, LLP, et al.
Case No. 1:11-cv-5112-RJH;

State Compensation Insurance Fund vs. Fuld, et al.
Case No. 1:11-cv-03892-LAK;

The State of New Jersey, Department of Treasury, Division of Investment v. Fuld, et al.
Case No. 1:10-cv-05201-LAK;

Starr International U.S.A. Investments LC, et al. v. Ernst & Young LLP
Case No. 1:11-cv-3745-LAK;

Vallejo Sanitation and Flood Control District v. Fuld, et al.
Case No. 1:09-cv-06040-LAK;

Washington State Investment Board v. Fuld, et al.
Case No. 1:09-cv-06041-LAK;

Zenith Insurance Company v. Fuld, et al.
Case No. 1:09-cv-01238-LAK

PLEASE TAKE NOTICE that, upon the annexed Declaration of Christopher S. Turner, dated January 6, 2012, and the accompanying Memorandum of Law in Support of Motions to Dismiss and Joinders in Motions to Dismiss Certain Individual Actions, dated January 6, 2012, the undersigned, on behalf of Defendant Ernst & Young LLP (“EY”), hereby moves this Court, before the Honorable Lewis A. Kaplan, United States District Judge, at the United States Courthouse, 500 Pearl Street, Courtroom 12D, New York, New York 10007, for an Order pursuant to Federal Rule of Civil Procedure 12, dismissing in whole or in part the following counts of the following complaints:

- Count II (Professional Negligence) in *Danis v. Ernst & Young LLP, et al.*, Case No. 1:11-cv-09001-LAK;
- Count II (Professional Negligence) in *Starr International U.S.A. Investments LC, et al. v. Ernst & Young LLP*, Case No. 1:11-cv-3745-LAK; and
- Count I (Violations of Section 11 of the Securities Act) in *The State of New Jersey, Department of Treasury, Division of Investment v. Fuld, et al.*, Case No. 1:10-cv-05201-LAK.¹

PLEASE TAKE FURTHER NOTICE that EY hereby joins, in part or in full, certain Motions to Dismiss filed by other defendants in the above-captioned actions, to the extent and in the manner articulated in the contemporaneously-filed Memorandum of Law in Support of Motions to Dismiss and Joinders in Motions to Dismiss Certain Individual Actions, and hereby moves this Court for an Order pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissing in whole or in part the following counts of the following complaints:

¹ EY is separately filing a Motion to Dismiss New York Attorney General’s Claim for Recovery of Fees Received by EY from Lehman in *The People of the State of New York v. Ernst & Young LLP*, No. 1:11-cv-384-LAK.

- Causes of Action in Sections VI.B.1, VI.C, VI.D.2, VI.E, VI.F, and VI.G (Violations of Section 11 of the Securities Act, Violations of Section 27.01 of the Texas Business and Commerce Code, Aiding and Abetting Violations of the Texas Securities Act, Common Law Fraud, Conspiracy, and Negligent Misrepresentation) in the Second Amended Complaint in *American National Insurance Company, et al. v. Fuld, et al.*, Case No. 1:09-cv-02363-LAK;
- Count I (Violations of Section 11 of the Securities Act) in the Second Amended Complaint in *California Public Employees' Retirement System v. Fuld, et al.*, Case No. 1:11-cv-01281-LAK;
- Counts I, VIII, IX, and X (Violations of Section 11 of the Securities Act, Violations of Section 25504.2 of the California Corporations Code, Fraud and Deceit, and Aiding and Abetting Fraud) in the Consolidated First Amended Complaint in the eight individual actions filed by the law firm of Cotchett, Pitre & McCarthy;²
- Counts I and II (Violations of Section 11 of the Securities Act and Violations of Section 25504 of the California Corporations, et seq.) in the Consolidated First Amended Complaint in the six individual actions filed by the law firm of Pearson, Simon, Soter, Warshaw & Penny, LLP;³
- Count I (Violations of Section 11 of the Securities Act) in the Complaint in *Epstein Real Estate Advisory Retirement Trust v. Fuld, et al.*, Case No. 1:10-cv-05617-LAK;
- Counts I and III (Violations of Section 10(b) of the Exchange Act and Common Law Fraud) in the Amended Complaint in *Fifty-Ninth Street Investors LLC v. Ernst & Young, LLP, et al.*, Case No. 1:11-cv-4278-LAK;
- Count II (Professional Malpractice) in the Complaint in *Loschiavo v. Fidelity Management Trust Co., et al.*, Case No. 1:10-cv-11598-LAK;
- Causes of Action in Paragraphs 23, 25-28, and 30 (Breach of Duty, Negligence, Fraud, Misrepresentation, Breach of Warranty, and Violations of Section 11 of the Securities Act) of the Amended Complaint in *Remer v. Fuld, et al.*, Case No. No. 1:10-cv-00502-LAK;

² The eight individual actions are (1) *City of Auburn v. Fuld, et al.*, No. 1:09-cv-03474-LAK, (2) *City of Burbank v. Fuld, et al.*, No. 1:09-cv-03475-LAK, (3) *City of San Buenaventura v. Fuld, et al.*, No. 1:09-cv-03476-LAK, (4) *Contra Costa Water District v. Fuld, et al.*, No. 1:09-cv-06652-LAK, (5) *Mary A. Zeeb, Monterey County Treasurer, on Behalf of the Monterey County Investment Pool v. Fuld, et al.*, No. 1:09-cv-01944-LAK, (6) *San Mateo County Investment Pool v. Fuld, et al.*, No. 1:09-cv-01239-LAK, (7) *Vallejo Sanitation and Flood Control District v. Fuld, et al.*, No. 1:09-cv-06040-LAK, and (8) *Zenith Insurance Company v. Fuld, et al.*, No. 1:09-cv-01238-LAK.

³ The six individual actions are (1) *City of South San Francisco v. Citigroup Global Markets, Inc., et al.*, No. 1:09-cv-01946-LAK, (2) *City of Long Beach v. Fuld, et al.*, No. 1:09-cv-03467-LAK, (3) *County of Tuolumne v. Ernst & Young, LLP, et al.*, No. 1:09-cv-03468-LAK, (4) *City of Fremont v. Citigroup Global Markets, Inc., et al.*, No. 1:09-cv-03478-LAK, (5) *County of Alameda v. Ernst & Young, LLP, et al.*, No. 1:09-cv-07877-LAK, and (6) *City of Cerritos v. Citigroup Global Market, Inc., et al.*, No. 1:09-cv-07878-LAK.

- Counts I and III (Violations of Section 10(b) of the Exchange Act and Common Law Fraud) in the Amended Complaint in *Schron v. Ernst & Young, LLP, et al.*, Case No. 1:11-cv-5112-LAK
- Counts III, X, XI, XII, and XIII (Violations of the Securities Act, Violation of Section 25504.2 of the California Corporations Code, Common Law Fraud, Aiding and Abetting Fraud, and Negligent Misrepresentation) in the Amended Complaint in *State Compensation Insurance Fund v. Fuld, et al.*, Case No. 1:11-cv-3892; and
- Count I (Violations of Section 11 of the Securities Act), in the Amended Complaint in *Washington State Investment Board v. Fuld, et al.*, Case No. 09 Civ. 6041.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Pretrial Order No. 23 entered in this action on November 9, 2011, Plaintiffs' opposition papers shall be submitted on or before February 6, 2012, and Defendant's reply papers shall be submitted on or before February 20, 2012.

Dated: January 6, 2012
New York, New York

LATHAM & WATKINS LLP

By: s/ Miles N. Ruthberg
Miles N. Ruthberg
Jamie L. Wine
885 Third Avenue
New York, New York 10022-4834
Tel: (212) 906-1200
Fax: (212) 751-4864
miles.ruthberg@lw.com
jamie.wine@lw.com

Peter A. Wald, *pro hac vice*
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-2562
Tel: (415) 391-0600
Fax: (415) 395-8095
peter.wald@lw.com

*Attorneys for Defendant
Ernst & Young LLP*